REPORT

OF THE

SUBCOMMITTEE TO THE COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

SIXTY-FOURTH CONGRESS

FIRST SESSION

IN THE MATTER OF

CHARGES AGAINST H. SNOWDEN MARSHALL UNITED STATES DISTRICT ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK

WASHINGTON
GOVERNMENT PRINTING OFFICE
1916

CHARGES AGAINST H. SNOWDEN MARSHALL.

To the Committee on the Judiciary of the House of Representatives:

Your subcommittee, appointed on the 1st day of February, 1916, to investigate the charges made by Representative Frank Buchanan against H. Snowden Marshall, United States district attorney for the southern district of New York, on the 19th day of June, 1916, filed a confidential report and with it the printed record containing the testimony and all exhibits filed. The report was referred back to the subcommittee as it was understood at the time that further testimony would be taken by the full committee. This testimony, for reasons which are fully understood, has not been taken, and as your subcommittee desires that there should be no further delay in the consideration of the case, begs leave to report as follows:

That it is impossible to ascertain the truth of the charges made which relate to the indictment of Representative Buchanan, and the indictment of Rae Tanzer, without a view of the minutes of the grand juries in these cases, and as these minutes have been denied to your subcommittee we feel that it is for you to determine as to the desirability of obtaining them. Should you decide to adopt the necessary legal proceedings in order to procure the minutes in question, we will be glad to give full consideration to the testimony as disclosed by them, and to submit our views upon the same; but if it should be decided not to procure the said minutes, but to determine the case upon the testimony already taken, in our judgment there is only one course that should be pursued, and that is to recommend to the House of Representatives that no further proceedings be had under H. Res. No. 90.

Respectfully submitted.

C. C. Carlin,
Warren Gard,
(Reserving the right to file herewith separate views.)
John M. Nelson,
(Same reservation.)

SEPARATE VIEWS OF HON. WARREN GARD.

In re the impeachment of H. Snowden Marshall, district attorney for the Southern District of New York.—Separate report of Mr. Gard, of subcommittee from the Committee on the Judiciary.

On January 12, 1916, Frank Buchanan, a Representative in Congress from the State of Illinois, arose and presented in the House of Representatives amended and completed charges of impeachment against H. Snowden Marshall, United States district attorney for the Southern District of New York, impeaching him of high crimes and misdemeanors.

Representative Buchanan had before, to wit, on December 14, 1915, presented certain charges of impeachment against said H. Snowden Marshall as said district attorney.

The amended and completed charges were 40 in number, and the subcommittee to which was referred these charges for investigation, for its convenience of consideration and also for the proper separation of evidence thereon, divided the charges into groups, as follows:

Group A, consisting of charges 1, 2, 3, and 4, which we designate as "conspiracies with persons and corporations."

Group B, consisting of charges 5, 6, 7, 8, 13, 14, 15, 23, and 24, matters relating to improper procuring of indictments.

Group C, consisting of charges 9, 10, 11, and 12, relating to the shipment of war munitions and conspiracies with foreign governments.

Group D, consisting of charge 16, the unlawful use of public funds in labor matters.

Group E, consisting of charges 17, 18, 19, 20, 21, and 22, attempting to improperly influence and improperly procure United States judges for the southern district of New York.

Group F, consisting of charges 25, 26, 27, 29, 30, 31, 32, 33, and 37, which relate to the cases of Rae Tanzer and others.

Group G, consisting of charges 28, 34, 35, 36, 38, 39, and 40, which we designate as relating to his personal unfitness to hold the office of the United States district attorney.

The subcommittee held its sessions in the city of Washington and in the city of New York and examined 76 persons as witnesses, some of whom were recalled and some of whom furnished additional statements and exhibits after testifying.

The evidence adduced will be commented upon under the foregoing grouping of charges, viz:

Group A.

1. I charge him with having conspired with persons, firms, and corporations, their agents and servants, to grant such persons, firms, and corporations the privilege of violating various criminal, neutrality, interstate commerce, or custom laws of the United States in the southern district of New York.

2. I charge him with securing for persons or corporations great financial profit in consequence of the violation of the United States laws.

3. I charge him with corruptly and collusively participating in such conspiracies.

4. I charge him with corruptly neglecting and refusing to prosecute gross and notorious violations of various criminal, neutrality, custom revenue, and antitrust laws of the United States within said judicial district.

The only evidence which was presented upon the four charges embodied in group A was certain evidence affecting transactions of importation of Julius Strauss and one Rosenthal at the port of New York, and after full consideration thereof I am unable to find any evidence which either actually or constructively associates H. Snowden Marshall as district attorney for the southern district of New York with any wrongdoing in connection therewith, and therefore it is my opinion that no evidence has been produced against said H. Snowden Marshall which would authorize his impeachment upon the charges in said group A.

GROUP B.

5. I charge him with corruptly inducing and procuring grand juries to return into the district court for the southern district of New York indictments charging crimes without there being evidence before said grand jury which would in any degree justify the finding and filing of such indictments.

6. I charge him with being guilty of oppression in corruptly procuring indictments from the grand jury in said district charging reputable citizens with crime, although there was no evidence before the grand jury which would in the least warrant such charges.

7. I charge him with corruptly conspiring with other persons to spread broadcast throughout the United States maliciously false newspaper publications and reports, emanating as official statements and purporting to describe results of investigations conducted by said United States attorney and his assistants, with the object of destroying friendly relations between the United States and one or more foreign Governments.

8. I charge him with unlawfully and feloniously abusing the legal process before the grand jury in said district of New York, the Secret Service, and the Bureau of Investigation and Inquiry of the Department of Justice in furtherance of such conspiracy aforesaid.

13. I charge him with having corruptly used the powers of his office for the purpose of slandering and libeling peaceable and law-abiding people to their great injury.

14. I charge him with having abetted, approved, acquiesced, and permitted unlawful and oppressive misuse of subpœnas and other process before grand juries in said southern district of New York.

15. I charge him with having deprived law-abiding citizens of their legal rights, privileges, and immunities.

23. I charge him with being a party to a conspiracy participated in by his assistant district attorneys and other officials connected with the administration of justice in the said southern district of New York, for the purpose of unlawfully manipulating and controlling the selection of grand and petit jurors in connection with cases in the courts of said district.

24. I charge him with having been guilty of acts by which the rights of the United States and that of individuals have been unlawfully prejudiced and the orderly and fair administration of justice defeated or obstructed in one or more instances.

The evidence presented upon the charges assembled as group B related to the proceedings in the office of the United States district attorney for the southern district of New York during the incumbency of said H. Snowden Marshall as said United States district attorney in the matter of procuring indictments against Representative Buchanan and others, in the matter of procuring indictments against Rae Tanzer, David Slade, Frank Safford, and others, and in the matter of procuring indictments against Herman Oppenheimer and Simon Kugel and others.

Your subcommittee having called before it United States District Attorney Marshall in executive session, asked him if he would submit without process for the consideration of the committee the minutes of the grand jury which had returned the indictment against Buchanan and others or whether he would prefer to have process of this committee issued therefor, and he advised the committee that he would

prefer to communicate with the United States Attorney General, which he did, and he later announced through his office and that of the Attorney General of the United States that the Department of Justice deemed said minutes of said grand jury to be privileged and therefore declined to submit them to the subcommittee for examination.

The subcommittee did not issue process to compel the production of these grand jury minutes.

Thereupon the subcommittee called certain members of the grand jury who testified and whose testimony is to the effect that this grand jury first began the hearing of evidence against one Von Rintelin, who was at that time charged with having endeavored to fraudulently procure a passport of the United States, and from the consideration of that charge other matters developed which resulted in the indictment of said Von Rintelin, Lamar, Monnett, Buchanan, Fowler, Schultheiss, Martin, and others.

The subcommittee was diligent in seeking to ascertain whether or not the indictment against Representative Buchanan had been returned against him without evidence and because of proceedings instigated by him upon the floor of the House of Representatives against said H. Snowden Marshall as such United States district attorney, and its inquiries developed from the examination of the grand jurors that the name of Representative Buchanan was associated in the evidence which it was considering as early as the latter part of September, 1915, and that there had been other and additional evidence offered to said grand jury against said Frank Buchanan before December 14, 1915, the date upon which the first charges of impeachment were made in the House of Representatives by said Representative Buchanan against District Attorney Marshall.

The evidence of grand jurors, the evidence of Special Agent Bielaski from the Department of Justice of the United States, the evidence of Assistant United States District Attorney Sarfaty, was to the effect that before the indictment of Representative Buchanan was returned, there had been evidence submitted to the grand jury which associated said Frank Buchanan with the offense for which he was later charged by indictment and which in their opinions justified his indictment.

The subcommittee, of course, could not pass upon the weight or the sufficiency of the evidence presented, but was called upon to determine only whether evidence had been presented against Representative Buchanan or whether the indictment had been returned solely because within his privilege as a Member of the House of Representatives he had preferred charges of impeachment against the district attorney for the southern district of New York.

There was no evidence to show that said United States District Attorney Marshall had caused said Representative Buchanan to be indicted without evidence and because of his having made charges of impeachment against said United States District Attorney Marshall on December 14, 1915.

In the matter of the indictments of Rae Tanzer, David Slade, Frank Safford, and others, the evidence discloses that one Rae Tanzer had through her attorneys, Slade & Slade, brought a suit against one James W. Osborne in the courts of New York County, charging seduc-

tion and breach of promise of marriage, and that within a few days after said petition had been filed in said New York County Court, said Rae Tanzer was arrested upon a charge of using the mails with intent to defraud, this charge being based upon a letter she had written to said James W. Osborne.

After being arraigned before United States Commissioner Houghton, said Rae Tanzer was later indicated by a grand jury for the southern district of New York, and in later indictments two of her sisters were indicted, as were Frank Safford, a hotel clerk; David Slade, counsel for Rae Tanzer, and other persons. These last-mentioned matters may be properly associated with charges 25, 26, 27, 29, 30, 31, 32, 33, and 37, as assembled in group F. It is sufficient to say that it is exceedingly questionable that the United States commissioner for the southern district of New York and the grand jury for the court in said district should have properly assumed jurisdiction in any of these cases. More particular comment upon this matter will be made under the consideration of group F.

The evidence submitted to us in the indictments against Herman Oppenheimer, Simon Kugel, and other persons shows that these named persons were indicted upon charges of unlawfully concealing the assets of certain bankrupts and upon charges of conspiracy to defeat justice in the trials and adjudications of bankrupt matters.

The evidence of Oppenheimer, Kugel, and a number of other persons was taken, as was also the evidence of the clerk of the United States court for the southern district of New York, and the evidence of Samuel Hershenstein, an assistant United States district attorney who had charge of said causes, and while the testimony of witnesses to some extent is in conflict, the consideration of the records of the United States court, of the indictments themselves, and of the different pleas to said indictments filed by said defendants, shows that there was no oppression or corrupt procuring of indictments against these persons.

GROUP C.

9. I charge him with having knowledge of the existence of circumstances from which knowledge is imputed to him that large sums of money have been expended for or on behalf of foreign Governments and of various purveyors and manufacturers of war munitions for the purpose of influencing the actions of said United States attorney in furtherance of a conspiracy.

10. I charge him with having corruptly neglected or refused to prosecute men who have made the port of New York, within said judicial district, a military or naval base for foreign belligerent powers.

11. I charge him with corruptly neglecting and refusing to prosecute violations of Federal statutes prohibiting the loading and shipment of explosives on ships carrying passengers within said judicial district.

12. I charge him with corruptly neglecting and refusing to prosecute violations of the foreign-enlistment act and laws of the United States within said district.

There was no evidence produced and none offered to be produced before said subcommittee to substantiate the charges made under said group C.

GROUP D.

16. I charge him with aiding, abetting, and approving unlawful expenditures of public moneys in violation of the laws of the United States.

There was no evidence produced and none offered to be produced to substantiate charge 16, which is herein denominated group D.

GROUP E.

17. I charge him with being guilty of attempts by private solicitation of influencing the official actions and opinions of judges in the southern district of New York while in the performance of their judicial duties.

18. I charge him with having used the powers of his office to cause and procure a discrimination in the assignment of judges to conduct trials in said district, so as to discriminate against one or more resident judges.

19. I charge him with having used the powers of his office to procure or assist in the procurement of judges to be imported into the southern district of New York from other districts for the trial of cases in said district by falsely representing the condition of judicial business within said district.

20. I charge him with being guilty of private solicitation with intent to influence the official acts and decisions of judges imported as aforesaid.

21. I charge him with having attempted to corruptly control decisions and official actions of one or more of such imported judges.

22. I charge him with having procured the assignment of one or more imported judges for the conduct of trials in the said district for the purpose of preventing defendants in such cases from receiving a fair and impartial trial at the hands of resident judges.

The evidence received by the subcommittee upon the charges assembled as group E fails to show any attempt of H. Snowden Marshall to influence the official actions and opinions of judges in the southern district of New York in the performance of their judicial duties, or to procure a discrimination in the assignment of judges or to discriminate against resident judges, or to procure judges to be imported into the southern district of New York, or of private solicitation with intent to influence the official acts or decisions of judges, or of having attempted to corruptly control their decisions and official actions, or of having procured the assignment of certain judges.

GROUP F.

25. I charge him with having employed the powers of his office for the purpose of shielding and to prevent the exposure of unlawful and improper conduct of one James W. Osborne in relation to facts involved in civil litigation which was pending in the State court in the State of New York.

26. I charge him with unlawfully protecting said Osborne and others from prosecution for the violation of United States laws.

27. I charge him with willfully and corruptly refusing and neglecting to prosecute gross and notorious violations of the United States statutes committed by said James W. Osborne and others in the city and State of New York within said district.

29. I charge him with having used the powers of his said office as United States district attorney to corruptly and willfully defame, slander, and injure the good name and professional standing of law-abiding citizens of the United States, to their great injury, for the purpose of protecting the private individual interests of James W. Osborne.

30. I charge him with having corruptly failed, neglected, and refused to prosecute persons who, while acting as witnesses for the United States in the trial of causes, committed the crime of perjury and conspiracy in connection with the cases of the United States against Rae Tanzer, United States against Frank D. Safford, and United States against Albert L. McCullough et al.

31. I charge him with having used and employed the United States grand jury in the southern district of New York for the purpose of attempting to establish records which might be used in defense of James W. Osborne, H. Snowden Marshall, Roger B. Wood, and Samuel H. Hershenstein (the last two being United States district attorneys under said H. Snowden Marshall), and not for the purpose of investigation of violations of the United States laws.

32. I charge him with corruptly and willfully failing to remove certain of his assistant district attorneys who destroyed documentary evidence material in the trial of a pending case in the United States District Court for the Southern District of New York.

33. I charge him with corruptly and maliciously causing to be instituted criminal proceedings against Rae Tanzer and others for the purpose of protecting James W.

Osborne, a special United States district attorney and a personal intimate friend of said H. Snowden Marshall.

37. I charge him with having corruptly and willfully withheld and failed to present before the grand jury material and important evidence in connection with alleged investigations instituted before said grand jury by said H. Snowden Marshall in relation to the cases of United States against Rae Tanzer and United States against Albert J. McCullough et al., and others.

The evidence upon this assembled group of charges was presented to us through the medium of the testimony of numerous witnesses and court records as disclosing the facts and procedure in the cases of the United States against Rae Tanzer, United States against Frank D. Safford, United States against Albert J. McCullough et al.

Charges 26 and 27, alleging that said district attorney unlawfully protected the said Osborne and others from prosecution for violation of the United States laws, and with wilfully and corruptly refusing and neglecting to prosecute gross and notorious violations of the United States statutes committed by James W. Osborne and others are not sustained by the evidence.

The evidence shows that Rae Tanzer was a resident of the county of New York, living in the city of New York with her two sisters.

That she met a man in the city of New York who solicited acquaintance with her and who visited her at her home and accompanied her to different places, telling her that his name was Oliver Osborne.

That Rae Tanzer and the man whom she knew as Oliver Osborne together visited a hotel in Plainfield, N. J., registering as man and wife, and that at least upon one other occasion they registered as man and wife at a hotel in the city of New York, at each of said times and places she having had sexual intercourse with said Osborne.

It is in evidence that Rae Tanzer later identified the man giving his name to her as Oliver Osborne as James W. Osborne.

The evidence shows that after Rae Tanzer had been solicited to return certain letters in her possession allegedly written by Oliver Osborne, she consulted several attorneys, including Max Steurer, who testified before this committee, the several attorneys first being consulted by her refusing to act against James W. Osborne on account of intimate professional or personal relations with him.

The testimony then is that Miss Tanzer visited the legal firm of Slade & Slade and that after her call upon them, a petition was prepared by said Slade & Slade in which Rae Tanzer was plaintiff and James W. Osborne was defendant, asking damages in the sum of $50,000 through the court of New York County against said defendant for seduction and breach of promise of marriage.

Within a very short time after this action was filed in the New York County court, James W. Osborne filed an affidavit before a United States commissioner against Rae Tanzer charging her with using the mails with intent to unlawfully defraud James W. Osborne.

Rae Tanzer was arrested by the authorities of the United States on this charge, was placed in jail, afterwards given a hearing before United States Commissioner Houghton, then bound over to appear before the grand jury, and was later indicted by said grand jury.

Following the procedure against Rae Tanzer, indictments were returned by the grand jury, for the southern district of New York against Frank D. Safford, Albert J. McCullough, David Slade, and other persons.

The only one of these cases which was fully tried was the case against Frank D. Safford, who was a clerk in the hotel at Plainfield at which it was alleged James W. Osborne and Rae Tanzer registered as man and wife, and who testified in identification of James W. Osborne, the jury in that case having found said Frank Safford guilty, which conviction has only lately been reversed by the court of appeals for manifest errors in the admission and rejection of evidence in the trial court to the prejudice of the defendant.

The trial of Rae Tanzer on a charge of perjury has only recently been concluded, in which trial there was a disagreement of the jury.

Rae Tanzer has never been brought to trial upon the charge for which she was originally indicted.

It is now charged by these proceedings in impeachment that said H. Snowden Marshall employed the powers of his office for the purpose of shielding and preventing the exposure of unlawful and improper conduct of one James W. Osborne in relation to facts involved in civil litigation which was pending in the State court in the State of New York. Other charges present in different wording certain other conditions affecting this same litigation, but the gist of the charge and of all charges connected therewith is contained in said charge No. 25.

While there has been no certain oral testimony directly showing the interest of the office of the United States district attorney in favor of James W. Osborne in the matter of the civil litigation against him, and the subsequent litigation in the criminal court for the southern district of New York, it is my opinion that the county courts of New York would have furnished to the said James W. Osborne all the procedure necessary to thoroughly bring before the proper court any contention, either civil or criminal, he might desire to make in answer to the petition filed against him by Rae Tanzer for seduction and breach of promise of marriage.

There seems to me to be no good reason why these criminal cases were instituted and prosecuted in the United States courts.

The very first procedure against one of the persons defendant in these causes, Frank D. Safford, was in the shape of an affidavit by one Mayhew, a post-office inspector, to which the testimony of Hon. Martin Littleton, formerly a Representative in the Congress of the United States from the State of New York, is as follows:

> Mayhew admitted he made a positive affidavit as to a state of facts which he did not know of and which, in my opinion, under the law of the State of New York amounted to false swearing or perjury, and he stated when crowded on the question as to why he did it that he was directed to do so by Mr. Roger Wood, assistant district attorney.

The question of these indictments and trials in the Federal court of the State of New York is best explained in the language of Mr. Littleton when he further said as a witness:

> I had thought that the assumption of jurisdiction in these cases by the Federal authorities, the assumption of jurisdiction to prosecute in the first instance Rae Tanzer in the Federal court as and for sending a letter through the mails which was part of a scheme devised to defraud, was an improper assumption of jurisdiction. I think that the case never ought to have been in that court. I will not say there can not be two opinions about it, but I will say that I think you will search the records of the court in vain to find where such jurisdiction has been assumed or asserted in regard to a similar state of facts. After that was done, of course the indictment of Safford, the indictment of Tanzer and Tanzer's sisters, the indictment of the Slades and McCullough, all rested upon the single act of fixing the jurisdiction by the complainant before Commissioner Houghton, for without that of course there would have been no

testimony given in the Federal case and there would have been no interference or alleged interference with the Federal courts; none of these things could have been brought out or none of these indictments could have been returned in the Federal court. I think the original and vital mistake or wrong or wrongful assumption of jurisdiction was in assuming to try and prosecute her under a Federal statute, when obviously if she was what she was claimed to be and her lawyers were what was claimed to be there was a perfectly plain remedy in the State courts.

These cases were conducted principally by Roger B. Wood, an assistant in the office of the district attorney, Marshall, with the latter's full sanction and approval, and without desiring to make intemperate or unauthorized comment upon the conduct of the United States district attorney or his assistants in these cases, it does appear to me that the arrest and prosecution of the persons arrested and indicted in the United States courts in these cases, all of which grew out of the arrest of Rae Tanzer on a charge of sending a letter through the mails to James W. Osborne with intent to unlawfully defraud, were not cases properly to have been brought in the courts of the United States and their having been brought in said courts was a wrenching of the jurisdiction thereof.

GROUP G.

28. I charge him with having prostituted the office of United States district attorney for the southern district of New York.

34. I charge him with corruptly and willfully failing and refusing to present to the court the trial of cases material and important evidence and in concealing or assisting and acquiescing in the concealment or destruction of material and important evidence relating to pending cases in the United States district court for the southern district of New York.

35. I charge him with being corrupt, grossly negligent, and unfit to retain the office as United States district attorney for the southern district of New York.

36. I charge him with having willfully and persistently violated the laws of the United States in connection with the performance by him of the duties of such United States district attorney for said southern district of New York.

38. I charge him with having corruptly and willfully refused and neglected to take cognizance of unlawful conduct of his assistant district attorneys in connection with the performance by them of official duties as such assistant district attorneys.

39. I charge him with corruptly participating in or acquiescing to the presentation to the court in trial of cases in the southern district of New York of alleged evidence which he knew to be untrue and manufactured, or in the manufacture of and attempt to manufacture such alleged evidence.

40. I charge him with producing willful injury and wrong to litigants in said district court and to citizens of the United States by his unlawful and improper conduct.

These charges allege in substance that said H. Snowden Marshall has been corrupt and grossly negligent in the conduct of his office as district attorney and is personally unfit to retain said office.

Charge 34 particularly alleges his assisting and acquiescing in the concealment or destruction of material and important evidence relating to pending cases in the United States District Court for the Southern District of New York, and the evidence upon this was the evidence pertaining to one of the cases alleging concealment of the effects of a bankrupt, and while there was some testimony as to one of the assistant district attorneys having sent for a witness and having asked for the production of certain papers and one paper having been produced to him, which he examined, he did tear it up, but this act of tearing up was with the consent of the witness appearing and was not material, inasmuch as it was but a copy, the original still remaining in the hands of the witness.

There is no evidence to sustain the charges that H. Snowden Marshall is personally unfit to be United States district attorney for

the southern district of New York. On the contrary, all of the testimony which has been given to the committee, this being the testimony of leading lawyers of the New York bar, the testimony of Federal judges, and, in fact, nearly all the testimony which this committee has received has shown to the committee that Mr. Marshall is a man of good character, of excellent professional standing, and one who apparently in the past has had high regard for the duties of his position and has attempted to carry out these duties honestly and impartially and to the best of his skill and ability.

In this connection it is but fair to the district attorney himself to say that almost all of the criticism directed by witnesses against the office of the district attorney has been directed against the conduct of certain of the assistants in his office.

We were not called upon to investigate the acts and conduct of assistants in the office of the United States district attorney for the southern district of New York except in so far as they directly affected the charges against the district attorney himself, and therefore I can only say that some of the acts complained of against the assistant district attorneys are apparently acts which had their origin in improper appreciation of legal ethics and mistaken zeal.

There was evidence offered concerning certain of the methods and procedure of the office of the United States district attorney for the southern district of New York, but as he is a subordinate under the Attorney General of the United States and his office subject to investigation by the Attorney General, I do not feel inclined to discuss this evidence here, for none of the methods and procedure which may be objectionable constitute grounds for impeachment of this district attorney.

The subcommittee had in mind the examination in executive session of the grand jury minutes hereinbefore referred to for the reason that it felt that it could thus best obtain the truth concerning the charges of impeachment made that indictments had been returned in said jurisdiction without evidence; and it was the intention of this subcommittee to hold the evidence of said minutes in the strictest confidence.

As this evidence was not obtained by the subcommittee for the reason before stated, the subcommittee makes a special report of this fact to the full committee.

With these minutes refused, the subcommittee, in what it deemed its proper scope of investigation, examined the foreman of the grand jury and certain others of the grand jurors who had returned the indictments against Von Rintelin, Lamar, Monnett, Buchanan, Schultheiss, and Martin, and some persons who had appeared before said grand jury as witnesses.

Our investigation has shown there was some evidence presented in each of the cases in which indictments were found, which cases were brought immediately to our attention by the charges of impeachment made, and unless the full Judiciary Committee desires further procedure to procure all the evidence submitted to said grand juries in said cases, this to be evidenced by the complete stenographic notes of said proceedings, it is my recommendation that no further proceedings be had under House Resolution No. 90.

WARREN GARD,
Of Subcommittee.

SEPARATE VIEWS BY HON. JOHN M. NELSON.

To the Committee on the Judiciary of the House of Representatives:

The undersigned, a member of the subcommittee of the Committee on the Judiciary, appointed to investigate the impeachment charges of Representative Frank Buchanan against H. Snowden Marshall, district attorney for the southern district of New York, respectfully submits the following views:

The undersigned is convinced, upon the evidence submitted, that H. Snowden Marshall is not a fit person to hold the office of district attorney for the southern district of New York. However, if the Committee on the Judiciary or the House shall insist upon a recommendation by the subcommittee at this time, either for or against the impeachment of Mr. Marshall upon these charges, without authorizing the production of the grand jury minutes disclosing how indictments were found against Representative Buchanan and others, Rae Tanzer, her attorneys and witnesses, I am constrained reluctantly to concur in the recommendation of the subcommittee that further proceedings under Resolution No. 90 be discontinued.

The investigation, notwithstanding it has extended over a period of months, has been necessarily unsatisfactory and incomplete. Not only has the committee been refused permission by the district attorney, acting under the direction of the Attorney General, to inspect the grand jury minutes in these cases, but has been subjected to the most severe attacks on the part of Mr. Marshall himself and newspapers doubtless inspired by him, which has greatly handicapped the official discharge of our duties. Under these restricting circumstances the committee confined its efforts to the taking of testimony of witnesses suggested by the impeaching Member, Mr. Buchanan, who has from the beginning protested that this was most unfair to him. He has properly insisted that it was his duty merely to furnish prima facie proof, and that the committee should make an independent investigation of the various charges presented by him against this district attorney. The committee, however, found itself surrounded by a stone wall of difficulties. On every hand the investigation found itself confronted with cases being tried in the courts, and the committee was reluctant to take any steps to procure evidence that would in any way interfere with their trial.

The undersigned has, therefore, been constrained to come to the conclusion that either the grand jury minutes in the Buchanan and Rae Tanzer cases should be produced by judicial process, or the investigation should be postponed until after the trial of these pending cases. While there is evidence before the committee which is conclusive of the fact that Mr. Marshall should be removed from the office of district attorney, it is my best judgment that the case should not be presented to the Senate by the House until all the facts that

are readily available have been developed, which under the circumstances described has not been found possible.

The large purpose of any impeachment proceeding is not punishment of any individual, but the removal of any civil officer, invested temporarily with power, who deprives citizens of rights or jeopardizes their liberty, and, therefore, is a menace to our republican form of government.

The Constitution denounces impeachable offenses under the terms of "treason, bribery, and other high crimes and misdemeanors." It is not contended in the charges of impeachment against Mr. Marshall that he has been guilty of either treason, bribery, or crime. His offenses, therefore, are covered, if at all, by the word "misdemeanors." From the beginning the precedents show that attorneys for civil officers on trial in the Senate have insisted that the language of the Constitution covered only indictable offenses, and the Senate, with possibly one or two exceptions, has seemed to incline toward that view. The House, however, through its managers, has invariably insisted that impeachment is a "means of removing men from office whose misconduct imperils the public safety and renders them unfit to occupy official positions." Believing that this is a sensible and just interpretation of the intent of the framers of the Constitution, and that it is supported by the best American text writers on the Constitution, the undersigned has adopted that standard by which to measure the official conduct of Mr. Marshall as district attorney. Temperamentally he is neither calm, dispassionate, nor judicial. He is a person of inordinate self-esteem, keenly sensitive to criticism, and passionately vengeful. Within the brief period that he has acted as district attorney he has wielded the tremendous power of his office, not to do impartial justice, but to achieve his object or to carry out the wishes of others intrenched in power. He is a "respecter of persons" and does not hesitate to use unjustifiable means to befriend whom he would befriend and to destroy whom he would destroy. As a consequence of his misuse of power, the rights of American citizens have been abridged, their reputations ruthlessly ruined, and their liberties jeopardized without just cause.

Respectfully submitted.

JOHN M. NELSON.

STATEMENT OF FACTS ACCOMPANYING VIEWS OF MR. NELSON.

Your subcommittee agreed upon the following grouping of charges:

Group A consists of charges 1, 2, 3, and 4, as they appear in the printed record, which we designate as "conspiracy with persons and corporations."

Group B consists of charges 5, 6, 7, 8, 13, 14, 15, 23, and 24, "matters relating to improper procuring of indictments."

Group C consists of charges 9, 10, 11, and 12, "relating to the shipment of war munitions, and conspiracies with foreign Governments."

Group D consists of charge 16, "unlawful use of public funds in labor matters."

Group E consists of charges 17, 18, 19, 20, 21, and 22, "attempting to improperly influence and improperly procure judges for the southern district of New York."

Group F consists of charges 25, 26, 27, 29, 30, 31, 32, 33, and 37, which "relate to what is known as the case of Rae Tanzer, and improper conduct with James W. Osborne in improperly using the power of his office."

Group G consists of charges 28, 34, 35, 36, 38, 39, and 40, "relating to his personal unfitness."

The subcommittee did not have before it evidence tending directly to sustain charges contained in the foregoing subdivisions, except charges 5 and 6 in group B, charges contained in group F, and charges 34 and 38 contained in Group G. Charges 5 and 6 in group B are as follows:

No. 5. I charge him with corruptly inducing and procuring grand juries to return into the District Court for the Southern District of New York of indictments charging crimes without there being evidence before said grand jury which would in any degree justify the finding and filing of such indictments.

No. 6. I charge him with being guilty of oppression in corruptly procuring indictments from the grand jury in said district charging reputable citizens with crime, although there was no evidence before the grand jury which would in the least warrant such charges.

These charges were intended to cover the indictment found against Representative Buchanan, with others, charging them with conspiracy to restrain trade. Knowing that the House was very much concerned to ascertain whether a Member had been questioned in another place for utterances of his on the floor of the House, the undersigned, as a member of the subcommittee, has given careful consideration to all the evidence, so far as it relates to the finding of this indictment, and has concluded that while there is evidence before the committee to show that testimony was taken before the grand jury relating to the indictment and the persons against whom it was found, ranging over a period of several months prior to the indictment, yet there was no testimony before the subcommittee to show either the relevancy of the evidence before the grand jury or the sufficiency thereof.

In reference to Representative Buchanan's indictment, attention is directed to these significant facts:

(*a*) The Department of Justice has failed to prosecute the Metropolitan Tobacco Co., although its own investigator, Mr. Marshall's assistant, Mr. Thompson, found and reported it had and was continuing to violate the antitrust law. (See also testimony of Ochs, Locher, and Wolf.) Yet it did indict a Member of Congress and others of the peace council, opposing the sale of munitions of war and the program of preparedness by means of speeches and literature, under the antitrust law.

(*b*) The indictment itself is vague and indefinite, stating no specific fact either as to manufacturers, articles restrained, or places where strikes have been incited.

(*c*) The testimony of grand jurors discloses (1) that Mr. Buchanan's name was handed in by the district attorney with others, and that he was indicted with them in a "bunch"; (2) that no name was added by the grand jury and no name taken away; (3) that Representative Buchanan as president and Mr. Taylor as his successor were indicted, but the secretary and treasurer and other officers were not; (4) that Mr. Marshall summed up the law, and that his assistant, Mr. Sarfaty, summed up the evidence; (5) that this was unusual unless requested by the jury; and (6) that the jurors discussed in the grand jury the impeachment of Mr. Marshall by Representative Buchanan on the floor of the House.

(*d*) Henry A. Wise, former district attorney, testified that the grand jury is "worth a 2-cent piece"; in other words, that it is merely a rubber stamp or cash register manipulated by the district attorney.

In short, with reference to the indictment of Mr. Buchanan, all the surrounding circumstances lead to the conviction that the production of the grand jury minutes so strenuously denied the subcommittee, or the trial of this case, will disclose that he is the victim of hostile political and financial interests who feared the campaign begun by the Peace Council, through labor organizations, against the propaganda of preparedness and the sale of war materials and supplies to any of the nations now engaged in the European conflict.

Group F contains nine specific charges, all practically included in No. 25, which is as follows:

No. 25. I charge him with having employed the powers of his office for the purpose of shielding and to prevent the exposure of unlawful and improper conduct of one James W. Osborne in relation to facts involved in civil litigation, which was pending in the State court in the State of New York.

This charge is intended to cover Mr. Marshall's use of the power of his office to assist his associate and friend, Mr. James W. Osborne, charged with seduction and breach of promise in a civil suit. In order that his favoritism may be seen in its proper proportion, all that is necessary is to contrast Mr. Marshall's action in the Rae Tanzer case with his action in the New York Tribune case. It is to be noted that in each case he deals with section 215, Criminal Code, which prohibits schemes or artifices to defraud by the use of the mails.

THE RAE TANZER CASE.

A virtuous young Jewess, Rae Tanzer, living with her two sisters, through a flirtation met with a person giving his name as "Oliver Osborne," some where on the streets of the city of New York, and subsequently went with him to Plainfield, N. J., where the injuries complained of occurred. Their relations continued for some time afterwards. Before bringing a civil suit, she claims to have discovered that Oliver Osborne was James W. Osborne, and she addressed him the following letter:

SUNDAY, *December 27, 1914.*

Mr. JAMES W. OSBORNE, Esq.,
115 Broadway, City.

DEAR OLIVER: Trying to change your mind? It's too late. You have ruined my life, and I hold you to your promises.

I have kept this trouble to myself, but can't stand it any longer; therefore I'll have to seek help through other sources. I have waited this while thinking you would be reasonable and consider what this means to me.

I want no publicity, for there's still a little pride left in me, although you have taken most out of me. My meeting you Christmas eve was by chance. Taken by surprise, weren't you? Was as near to you on several other occasions before then, but didn't want to be bold. Will tell you when and how sometime.

Did I get the letter you never sent me? Well, I still have the ones you sent me when you were the California ranchman, which I kept, not for a purpose, but because I thought you were just the grandest man, and I loved you with a heart that wasn't meant for a man like you to trifle with. You know it wasn't for the diamonds (that you are still having fixed for me) or your money. I was always in the habit of dressing nicely, but things weren't as nice with us lately. I was content. Did you ever hear me complain? In fact, I tried to hide everything until everything was in better shape.

You know I was a good girl until I met you, but I was so infatuated with you from the start that I lost my head entirely and didn't stop to reason, but always knew you would protect me, for I didn't think a man of your reputation would act otherwise; but I hope my doubt is all a misunderstanding on my part, for your sake.

Don't let me confide in anyone or do anything you wouldn't like me to do, for I haven't as yet, but will have to if you won't protect me. I knew you weren't going to meet me Christmas eve, but I went down anyhow. That all added to my misery. Will wait to hear from you until Saturday next, and then I shall not write you again.

RAE.

There I stood waiting at the circle.

Later Miss Tanzer employed counsel and a civil suit was brought in the State courts to recover damages on the 16th day of March, 1915. Three days after the beginning of the civil suit, to wit, the 19th of March, 1915, she was arrested upon a warrant sworn out by James W. Osborne before the United States district commissioner, charging her for using the mails for the purpose of defrauding, etc., by the mailing of the above letter. Subsequently, her attorneys, their investigator, her two sisters, and other witnesses were indicted, charged with various violations of the Federal law. Miss Tanzer remained in the Tombs until she could secure bail. This proceeding resulted in the discontinuance of the civil suit. She testified before the subcommittee that she was persuaded to take this step because of pressure brought to bear upon her then counsel and bondsman, Mr. Spielberg, whom the undersigned believes to be a tool of James W. Osborne. This tool persuaded here to make a "recantation," which she did in part, but afterwards repudiated on the stand, and made a stipulation, which is as follows:

MISS RAE TANZER: I am satisfied to attempt to help you out of the difficulty you got yourself into, because I believe that you were honest all the way through.

I am likewise satisfied that your attorneys, Slade & Slade, and the other witnesses were honestly mistaken. I will not tell anything you told me unless I have the absolute assurance of the authorities that nobody connected with your case will be hurt in any way.

HAROLD SPIELBERG.

Notwithstanding this stipulation, she has been prosecuted, not for using the mails to defraud, which has been pending for nearly a year and a half, but for perjury, with the result that the jury disagreed. From all the facts and circumstances in evidence it is clear to the undersigned that in this case Mr. Marshall came to the rescue of his friend Osborne, who was in danger not only of a civil suit, but of prosecution under the Mann Act, and by "wrenching jurisdiction" from State court he has been ruthless in depriving Miss Tanzer of her rights, her attorneys and witnesses of their reputations, and all parties to her suit have had their liberties jeopardized in the most flagrant manner. Indeed, the treatment accorded this young woman, the clerk of the hotel, Mr. Safford, and the other witnesses is cruel and heartless beyond description.

THE NEW YORK TRIBUNE CASE.

Contrasting Mr. Marshall's action in the Tanzer case with his action in the New York Tribune case, the facts in evidence show that the parties interested were a real estate promoter, Mr. Mayo, and the New York Tribune Co. The scheme for which the mails were being used was to advertise that every person subscribing to the Tribune for six months would be permitted to buy a lot in New Jersey for $19.60. The evidence disclosed the fact that the land was worth not to exceed

$6 per acre, but was being sold at the rate of $320 per acre. It consisted of scrub oak land and sand. This "summer resort," as it was designated, had neither sewers, lights, sidewalks, nor other improvements. The estimated profit out of the scheme is about three-quarters million dollars. This swindle was investigated by a reputable newspaper man, who reported the facts to Mr. Marshall. Mr. Marshall secured the services of two post-office inspectors, McQuillan and Schaeffer, who after five or six weeks of investigation reported the scheme a swindle and a plain case of violation of law. Now, what was done? Although the grand jury was in session, it was not brought to its attention. Although Mr. Watson urged that subpœnas be issued to bring persons before the grand jury, Mr. Marshall refused to do so. At the end of the investigation, having before him the reports of the inspectors, he wrote his friend Henry A. Wise, attorney for the Tribune Co., that there would be no prosecution. To Mr. Watson he gave the explanation that he wanted "to let Henry collect his fee and get away on his vacation." Nearly a year has gone by, and still no action has been taken, nor has the case been presented to the grand jury.

KEEN & BARD CASE.

Contrast again Mr. Marshall's treatment of the Tribune Co. with his treatment of Keen & Bard, with reference to this same section 215 of the Criminal Code. In the latter case the testimony shows that Roger B. Wood, assistant to Mr. Marshall, acting as attorney for the Pike's Peak Film Co. and the Pike's Peak Photo-Play Co., sought to recover from Messrs. Keen & Bard certain films. The said Roger B. Wood appeared at the place of business of Mr. Keen and demanded the return of the films. According to the testimony of Mr. Keen, the conduct of Mr. Wood was boisterous and threatening. He declared that he was a United States district attorney. Some months afterwards a warrant was sworn out through the agency of Mr. Marshall's office, before the United States district commissioner, charging Messrs. Keen & Bard with having used the mails for purposes of defrauding, etc. Bard was arrested late in the afternoon and had to spend the night in the Tombs. Keen dodged the process until Monday, and then appeared with his bondsman. Both were released on bail. The bail demanded was $10,000, and this excessive sum was asked, according to testimony, at Mr. Wood's request, acting as assistant district attorney. Mr. Henry A. Wise, former district attorney and friend of Mr. Marshall's, appeared as their attorney. Subsequently in an interview with the district attorney Mr. Wise brought Mr. Marshall's attention to the facts in the case as not being in violation of any United State statute. By reason of Mr. Wood's private interest in the matter, Mr. Marshall referred the decision of the case to Mr. William L. Wemple as referee, to determine whether there has been any violation of Federal law. Mr. Wemple decided in the negative. Notwithstanding, the case was referred to the district attorney's office of the county of New York and again, after investigation, it was found that these gentlemen had violated no law.

THE SLADE & SLADE CASE.

Contrast again the treatment accorded James W. Osborne, an attorney, with the treatment accorded David and Maxwell Slade, as attorneys. Although James W. Osborne is charged by Rae Tanzer with conduct which was a clear violation of the Mann Act, yet Mr. Marshall not only does not prosecute him, but rushes to his defense in the civil suit for seduction and breach of promise. He is persuaded by Mr. Osborne to proceed in the Federal courts against Rae Tanzer three days after she had started her civil suit in the State court, and her attorneys had agreed to all Mr. Osborne's requests for bill of particulars and speedy trial. Obviously, if there was any offense at all committed by Miss Tanzer it was a case of blackmail and, therefore, wholly within the jurisdiction of the State courts. Although a pretended Oliver Osborne appeared one day at the home of James W. Osborne, he immediately disappeared and has never been found. In fact, as testified to by Mr. Le Gendre, the newspaper men have had great sport at the expense of Mr. Marshall over the alleged Oliver Osborne. Slade & Slade, who were attorneys for Rae Tanzer in the civil suit, were made the victims of all the oppressive power of Mr. Marshall's office, because they ventured to start this civil suit against his friend Osborne. They have been indicted, charged with conspiracy to obstruct justice. Two overt acts have been set forth: The one being that Mr. Slade whispered to his own client in open court, "Here he comes," meaning James W. Osborne. A most ridiculous suggestion. Think of an attorney being indicted for obstructing justice in whispering to his own client in open court. But even this charge is denied by witnesses and it is by no means certain that even this whispering occurred.

The other charge relates to the preparation of an alleged photograph of Rae Tanzer and James W. Osborne taken together. The photographer of the New York World testified that the scheme was proposed by Mr. Osborne himself in the presence of the district attorney, his assistants, Wood and Hershenstein, and a Government inspector. The purpose was to trap, if possible, the Slades into the use of this composite photograph, as a part of their evidence. The testimony shows that the Slades did not suggest it, and that the photographer never reported the matter to them. He thought it too ridiculous to attempt. Yet these attorneys have been indicted for obstructing justice, and this is one of the counts in the indictment. The undersigned has carefully read the evidence in the trial of Slade and Slade, which terminated abruptly, because the sitting judge became ill. From beginning to end it is a travesty upon justice. The whole case was tried to vindicate James W. Osborne in the public mind, and to prove, if possible, that he was not the Oliver Osborne. The record, consisting of 904 pages, discloses that not a page contains any effort to prove either of these overt acts on the part of Slade and Slade. Not a reference was made in the trial to the use of the composite photograph.

THE SAFFORD CASE.

Finally, contrast Mr. Marshall's conduct with reference to the crime of perjury. Mr. Frank J. Safford was a clerk in the hotel at which "Oliver Osborne" and Rae Tanzer registered. He appeared

before the commissioner as an unwilling witness and identified James W. Osborne as Oliver Osborne. For so doing Mr. Marshall has had him indicted and tried for perjury. The undersigned has carefully read the record in the Safford case and again wishes to state that it is a rank travesty upon justice. The case from beginning to end was manifestly conducted with the sole purpose of clearing James W. Osborne, if possible, in the public mind from the charge of being the Oliver Osborne who seduced Rae Tanzer. Attention is also directed to the fact that the judge in that case was exceedingly unfair, admitting evidence that had no place in the case, and in his instructions to the jury argued the case as Mr. Osborne's attorney, going outside of the record to convince the jury that James W. Osborne was not Oliver Osborne. The jury found Safford guilty but recommended him to the clemency of the court. Subsequently, upon appeal, the decision was reversed, the court holding the defendant had a right to be tried according to the rules of law and evidence.

In contrast with the treatment of Mr. Safford, who testified in a case, it is interesting to note that the first procedure against him was an affidavit by one Mayhew, a post-office inspector, who admitted upon the stand that he had no knowledge whatever of the facts to which he made an affidavit, and when asked why he made it replied that he was directed to do so by Mr. Roger B. Wood, assistant district attorney, and Mr. Marshall has disclosed the fact that he had full knowledge of this case and approves of everything his assistants have done in court.

ABUSE OF AGENCIES OF JUSTICE.

In order to condense this statement it is necessary to refer to these matters without going into detail. There is neither time nor space to refer to the testimony as to the misuse of power on the part of the district attorney in the use he makes of the grand jury, of subpœnas, and of indictments for conspiracy. The use of these agencies of justice by this district attorney's office has created a state of terror in this jurisdiction. While it can not be said that Mr. Marshall is the author of this abuse of power in the use of these agencies of justice, it is in evidence that he has not restrained but rather encouraged the extension of their abuse.

Respectfully submitted.

JOHN M. NELSON.